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on
Brownfield and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfield Problem?

before the
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Committee on Government Reform
Subcommittee on Federalism and the Census

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Chairman Turner and members of the Subcommittee on Federalism and the Census, it is a pleasure to appear before you today to discuss the critical intergovernmental foundation of successful brownfield revitalization efforts.

For the past five years, I have been working at the Northeast-Midwest Institute to track state-level brownfield financing initiatives, developing the first national analysis of various state incentive offerings back in 2001. I have also worked closely with the executive leadership of several of the state chapters of the National Brownfield Association (NBA), including the Ohio chapter, on these same issues in my capacity as Co-Chair of its Policy Advisory Board. This year, in fact, the NBA devoted its annual Washington, DC leadership summit to examining the components that are needed in an optimum state brownfield program. NBA Executive Director Robert Colangelo will discuss in more detail the findings that have emerged from those discussions.

All this research and analysis has documented and re-enforced what many of us have observed about the brownfields market over the past decade, specifically, that state brownfield programs continue to evolve and mature – even as their program goals remain the same, namely, to:

- bring more certainty to the cleanup process;
- establish greater levels of finality to cleanups, with liability relief and no further action mechanisms; and

- offer incentives to new site owners and prospective purchasers, to help level the economic playing field between old brownfield and new greenfield sites, to give these sites an opportunity to take advantage of their full economic and community revitalization potential .

Encouraged by passage of the federal Small Business Liability Relief and Brownfield Revitalization Act in January 2002, all states now have brownfield or voluntary cleanup programs (VCPs) in place, to offer some type of liability relief to those wishing to remediate and reuse brownfield sites. Equally important, though, more than half the states now have some type of program in place to help finance brownfield reuse. States are putting many different – but equally effective – approaches in place to bring the resources together to meet the diverse challenges of brownfield reuse. They recognize that no specific type of public-private or inter-governmental partnership -- and no single approach -- fits the financing needs of **all** brownfield projects. And while it is hard to generalize, state financing programs fall into four common categories, helping to facilitate real estate transactions and site reuse in various ways.

(1) State tax credits, abatements, and other tax incentives are increasingly being applied to brownfield projects. These programs help with a project's cash flow, by allowing resources and project revenue to be used for brownfield purposes rather than for tax payments. This can help site reusers get the cash together to deal with some of the site preparation costs that contamination involves. This cash flow cushion from a tax break can also help a project's financial look in the eye of a lender.

State and federal tax incentives historically have been used to channel investment capital and promote economic development in areas that have needed it – and brownfield targeting is a natural evolution of this type of program tool. Most state tax incentives are targeted to offset cleanup costs or to provide a buffer against increases in property value that would raise tax assessments before the site preparation costs are paid off.

Currently, 23 states offer some type of tax incentive. One of the more interesting approaches is that of **Michigan,** which has adopted a new, 100 percent, 12 year abatement of its single business tax to encourage site reuse in distressed areas. Abatements are available in communities that designate what the law terms "obsolete property rehabilitation districts. This incentive is designed to free up capital for site reuse at an early stage.

Colorado's incentives have been designed to support smaller site cleanups. In 2002, the legislature authorized tax credits to offset remediation expenses – a 50 percent tax credit against the first $100,000 in cleanup costs, 30 percent of the second $100,000, and 20 percent of the next $100,000.

In **New Jersey**, brownfield site owners in designated Environmental Opportunity Zones can negotiate with their local communities and arrange to use some of their annual property tax levy to cover up to 75 percent of their site clean-up costs, instead of paying it to their local tax collector. Site owners can also get tax rebates from the state, through redevelopment agreements with developers, to allow recovery of up to 75 percent of their remediation expenses.

Ohio is trying to level one aspect of the site selection playing field by offering a state franchise or income tax credit for Phase I and II assessment and cleanup costs. Site owners can claim the lesser of 10 percent or $500,000 for these purposes.

Illinois provides a 25 percent income tax credit of up to $150,000 per site — this is available to developers who spend at least $100,000 to restore contaminated sites, and these credits are transferable to new owners. This can be important to encourage site redevelopment by parties who will not eventually be the end-users of the property.

Missouri offers a variety of property, income, and job creation tax incentives, for up to 10 years, as part of its Brownfield Redevelopment Program. Site reusers pick from the menu according to their project needs, and package them together. The value of the incentives can total up to the entire cost of remediation.

And **Minnesota** has modified its tax increment financing (TIF) laws to recognize one of the realities of brownfield sites — stigma. In Minnesota, communities can define a hazardous waste TIF sub-district and value brownfield sites within them at zero, for TIF purposes. This boosts the increment and the potential to raise proceeds for cleanup and redevelopment.

(2) States are targeting financial assistance programs directly to promote brownfield reuse. Capital gaps remain the biggest barrier to brownfield reuse, and 22 states have worked to address this issue by putting some sort of financing incentives in place – both direct financing tools, such as loans or grants, or indirect financing assistance such as tax abatements or credits. These programs meet several objectives. They are targeted to help finance specific parts of the project, such as site preparation. They can be used to increase the lender's comfort with these projects, by offering guarantees to limit the risk of potential losses. Or, they can ease the borrower's cash flow by plugging certain capital holes or off-setting the extra up-front costs of site cleanup. In the past few years, more state legislatures have focused on this aspect of brownfield financing than any other.

For example, **Indiana** has a $10 million environmental RLF in place. The program is structured to allow the state to forgive 20 percent of its loan amount for projects meeting community determined development goals, with priority given to gas stations and facilities located within one-half mile of a school or child-care center.

Illinois offers a Brownfield Redevelopment Loan Program to offer low-interest loans to local governments and private parties, for site assessment, remediation, and demolition costs. This is intended to complement the state's existing grant program that gives cities up to $120,000 to pay for site assessments and preparation of cleanup plans.

Wisconsin offers a Brownfield Environmental Assessment Program, known as BEAP. Under BEAP, the state Department of Natural Resources provides funding to communities to conduct Phase I and II assessments at city or county nominated sites, to complete the informational picture needed to market brwonfield sites.

Florida has enacted a package of financial assistance programs targeted to brownfields. A loan guarantee program provides 5 years of guarantees or loan loss reserves for primary lender loans made in defined brownfield areas for redevelopment projects. Another program provides loan resources to communities and non-profits to redeem contractor liens on brownfield properties, in order to move them more easily into productive reuse. Still another Florida initiative targets the employment opportunities of brownfields, by allowing employers who open operations on designated brownfield sites to claim a $2,500 state income tax credit for each job created there.

Kansas created an Agricultural Remediation Fund in 2000, to provide up to $300,000 in low-interest loans to sites where pesticides and other agricultural-related contaminants have left brownfields in their wake.

Finally, a few states are working on brownfield financing connections with federal funds that the state receives. **Wisconsin** has been earmarking $2.5 million annually in its state-administered CDBG funds for small cities, for site assessment and cleanup costs. **Connecticut** and **Washington** are currently considering pledging some of their small cities CDBG allocation as collateral to establish multi-million dollar Section 108 loan guarantee funded pools to help small cities cover brownfield redevelopment costs.

(3) States are establishing direct brownfield financing efforts. Often capitalized with bond proceeds, these programs directly match resources to needs, usually in places where the private sector may fear to tread.

About 14 states have done this. Most recently, **Ohio** has set the pace, as voters there approved a major environmental bond issue in 2000 that included $200 million for various brownfield reuse initiatives, administered through the Clean Ohio Fund. Mr. Chairman, your home city of Dayton has been one of the leading beneficiaries of these resources, receiving funding in successive competitive rounds to carry out a creative strategy to clean up and revitalize the central core of the city.

A few other states – such as **Michigan, Connecticut,** and **New York –** have also set aside general obligation bond proceeds specifically for brownfield purposes.

Nearly a dozen states have provided general appropriations to capitalize loan and grant funds. These include **Delaware,** which makes low-interest loans of up to $250,000 to cover 90 percent of cleanup costs. **New Jersey** has an industrial sites recycling program in place, which covers half the cost up to $1 million per site; **Pennsylvania** offers up to $1 million per site for remediation. **Minnesota's** contamination cleanup grant program covers 75 percent of the cleanup costs at eligible projects. **Indiana** recently enacted a "just-in-time" site assessment financing initiative, to provide communities with critical resources to complete assessments at properties where prospective purchasers have shown interest, but the lack of solid information deters them from acquisition or development. And **Wisconsin** last year authorized nearly $40 million in targeted brownfield financing, for a variety of grant and debt-style programs.

(4) More states are exploring innovative programs to support brownfield financing by helping to level the economic playing field between greenfield and brownfield sites. About half a dozen programs do this in various ways, by limiting risk or offsetting critical costs such as those for site assessments. Most of these programs were enacted as a way to leverage private investment while limiting public spending.

Michigan has authorized the establishment of Brownfield Redevelopment Authorities, which have TIF and bonding authority. Some 75 authorities have been set up around the state to date, and they are proving useful as "one-stop" shops for information and technical assistance, as well as resources.

Wisconsin has addressed a tax issue that has proven to be a brownfield barrier in cities all over the country, namely, the issue of payment of back taxes on abandoned sites. Wisconsin now allows cancellation of delinquent taxes for new purchasers as part of an agreement to clean up contaminated property.

Pennsylvania, through its Key Sites initiative, supports state-funded contractors who conduct site assessments and prepare work plans that promote the reuse of abandoned industrial properties, and then help coordinate with the state's three major brownfield financing programs.

The **Massachusetts** Access to Capital program includes funding to pay for 25 percent of the premiums on environmental insurance needed to attract private lenders to brownfield projects, through two policies negotiated by the state with the AIG company. Several other states are exploring this concept.

In closing, we know that funding gaps are a primary deterrent to site and facility reuse. However, the state and federal governments can do much to help balance the playing field between greenfield and brownfield sites. Creatively crafted and carefully targeted incentives and assistance can help advance cleanup and reuse activities and achieve significant community benefits. Moreover, these efforts need not be "giveaways." The notion of the entrepreneurial city, prevalent in many development programs, can be extended to brownfield initiatives. Agencies and organizations that share in project risks can also recover some of their investment during subsequent site sale or development.

As stated, no single public-sector approach fits the financing needs of all brownfield projects, which vary by project situation, type of developer, level and type of contamination, and desired rate of return. As we have seen from the experiences of numerous cities, successful brownfield revitalization requires ever-more innovative funding partnerships, which link together a number of federal, state, and local financing programs and resources to provide the continuum of financing that is needed to take a brownfield project through its complete cycle of redevelopment, from site assessment to cleanup to construction. Many communities have also discovered how to take these types of partnerships to the next level, to link state program resources with federal funding and technical support in order to realize even greater leveraging opportunities.

Governments at all levels can find creative ways to help overcome reuse challenges. However, brownfield reuse will only succeed if state efforts can be complemented by federal initiatives -- such as cleanup credits, historic tax incentives, and targeted program funding -- in a true inter-governmental partnership. The federal government, whose programs, policies, and regulations form the foundation on which many state and local finance initiatives are built, must play an even stronger role if financing for brownfield redevelopment is to become more widely available.

Thank you for the opportunity to speak, and I look forward to your questions.